

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 348 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE A.L.DAVE

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

KETAN KANTILAL SHETH

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Revision Application No. 348 of 2003
MR ND NANAVATY ld. Sr. Advocate for
NANAVATY ADVOCATES for Petitioner No. 1
MS NANDNI JOSHI ld. APP for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE A.L.DAVE

Date of decision: 13/09/2004

C.A.V.JUDGEMENT

1. Rule. Ms.Nandni Joshi learned Addl. Public
Prosecutor for the State waives the service.

2. By this Criminal Revision Application, the revisionist challenges the order passed by learned Additional Sessions Judge, Kheda camping at Anand on 1st July, 2003 in Criminal Revision Application No.18 of 2003, whereby the case of the applicant for default bail entertained by learned JMFC, Anand was quashed and set aside.

3. The facts of the case in brief can be stated in a narrow compass as under :

3.1 The revisionist came to be arrested on 1st November, 2002 by Vidhyanagar Police in connection with M. Case No.29 of 2002 for offences punishable under Section 406, 420, 465, 467, 468, 471, 120-B and 114 of IPC. He was produced before the Magistrate on the same day and was remanded to police custody for 10 days. Whereafter he was produced before learned JMFC and was remanded to judicial custody. The applicant preferred an Application for bail before learned JMFC, Anand under Section 167 of Code of Criminal Procedure on 31st January, 2003 on account of default on part of the prosecution in filing the charge-sheet within stipulated period of 90 days. The said application came to be allowed by learned JMFC after hearing the other side on 5th February, 2003. Pursuant thereto, the applicant furnished bail bonds on 14th February, 2003. In the meanwhile, the State, being aggrieved by the said order of learned JMFC, preferred the Criminal Revision Application No.18 of 2003 before the Sessions Court on 18th February, 2003. Notice was issued to the respondent on 7th April, 2003 and ultimately, the learned Additional Sessions Judge, by the judgment and order impugned herein, allowed the Revision Application and cancelled the default bail granted to the revisionist. Aggrieved by the said judgment and order, present Revision Application came to be preferred by the revisionist on 17th July, 2003.

4. Learned Senior Advocate Mr. Nanavaty appearing for the revisionist submitted that the Sessions Court committed an error in entertaining the Revision Application preferred by the State against the order of learned JMFC, Anand releasing the applicant on bail, that too when the revisionist had already furnished bail bonds and release order was issued on 14th February, 2003. Learned Senior Advocate Mr. Nanavaty submitted that the statute contemplates an outer limit of 90 days for an accused to be remanded to custody and by no interpretation can this period be enhanced. According to

him, the accused was remanded to custody on 2nd November, 2002 and for computing period of 90 days, that date should be taken into consideration. He submitted that learned Additional Sessions Judge has committed an error in discerning the ratio laid down by the Apex Court in the case of Uday Mohanlal Acharya Vs. State of Maharashtra, (2001) 5 SCC 453. He submitted that this Revision Application may be allowed.

5. The Revision Application is opposed to by learned APP Ms. Nandni Joshi. She has heavily relied on the decision of the Apex Court in the case of State of M.P. Vs. Rustam & Others, 1995 Supp (3) SCC 221. She submitted that even if the period of 90 days is computed considering 2nd November, 2002 as the date on which the revisionist came to be remanded to police custody for 10 days, the period of 90 days would last till 31st January, 2003, the day on which the charge-sheet came to be filed. She submitted that the right of the accused for default bail would accrue only on expiry of 90 days, whereas, in the instant case, the charge-sheet came to be filed on 90th day and as such, no right can be said to have accrued to the accused - revisionist for default bail. Learned JMFC was, therefore, in error in granting default bail and learned Additional Sessions Judge was, therefore, right in setting aside that order by allowing Revision Application. She submitted that the Revision Application, therefore, may not be entertained.

6. In rejoinder, learned Senior Advocate Mr. Nanavaty submitted that decision in the case of Rustam (Supra) stands overruled by the decision in the case of Uday Mohanlal (Supra) and no reliance, therefore, can be placed on the decision in the case of Rustam.

7. This Court has given due consideration to contentions raised before it and in order that the discussion that is to follow can properly be appreciated, certain relevant and undisputed aspects need to be stated once again :

- (i) The revisionist came to be arrested on 1st November, 2002.
- (ii) He was produced before the Magistrate on 2nd November, 2002 and was remanded to custody of police for a period of ten days.
- (iii) The accused was remanded to judicial custody on 12th November, 2002.

- (iv) The revisionist preferred an Application under Section 167 for default bail before learned JMFC on 31st January, 2003.
- (v) Charge-sheet came to be filed on 31st January, 2003 itself.
- (vi) The order was passed by learned JMFC on 5th February, 2003.
- (vii) The Revision Application came to be preferred on 18th February, 2003.
- (viii) The Revision Application allowed on 1st July, 2003.

8. The relevant provisions of law as contained in Section 167 of Code of Criminal Procedure runs, thus :

167. Procedure when investigation cannot be completed in twenty-four hours.

1. X X X

2. The Magistrate to whom an accused person is forwarded under this section may, whether he has or has not jurisdiction to try the case, from time to time, authorise the detention of the accused in such custody as such Magistrate thinks fit, for a term not exceeding fifteen days in the whole; and if he has no jurisdiction to try the case or commit it for trial, and considers further detention unnecessary, he may order the accused to be forwarded to a Magistrate having such jurisdiction:

Provided that -

[(a) the Magistrate may authorise the detention of the accused person, otherwise than in the custody of the police, beyond the period of fifteen days, if he is satisfied that adequate grounds exist for doing so, but no Magistrate shall authorise the detention of the accused person in custody under this paragraph for a total period exceeding, -

(i) ninety days, where the investigation relates to an offence punishable with death, imprisonment for life or imprisonment for a term of not less than

ten years;

- (ii) sixty days, where the investigation relates to any other offence,

and, on the expiry of the said period of ninety days, or sixty days, as the case may be, the accused person shall be released on bail if he is prepared to and does furnish bail, and every person released on bail under this sub-section shall be deemed to be so released under the provisions of Chapter XXXIII for the purposes of that Chapter;]

- (b) no Magistrate shall authorise detention in any custody under this Section unless the accused is produced before him;

- (c) no Magistrate of the second class, not specially empowered in this behalf by the High Court, shall authorise detention in the custody of the police.

9. It is, thus, clear that on expiry of period of 90 days or 60 days as the case may be, the accused person has to be released on bail if he is prepared to and does furnish bail. Therefore, the right to be released on bail on default of the prosecution in filing the charge-sheet within stipulated period of 90 days or 60 days accrues on expiry of the said period.

9.1 It will have, therefore, to be examined as to when can the said period of 90 days be said to have expired and for that purpose, it will have to be examined as to how to compute the period of 90 days.

9.2 For the above purpose, provisions contained in Sections 9 and 10 of the General Clauses Act, 1897 will have to be seen. They run as under :

Section 9 Commencement and termination of time.

- (1) In any [Central Act] or Regulation made after the commencement of this Act, it shall be sufficient, for the purpose of excluding the first in a series of days or any other period of time, to use the word "from", and, for the purpose of including the last in a series of days or any other period of time, to use the word "or".

(2) This section applies to all [Central Acts] made after the third day of January, 1868, and to all Regulations made on or after the fourteenth day of January, 1887.

Section 10 Computation of time.

(1) Where, by any [Central Act] or Regulation made after the commencement of this Act, any act or proceeding is directed or allowed to be done or taken in any Court or office on a certain day or within a prescribed period, then, if the Court or office is closed on that day or the last day of the prescribed period, the act or proceeding shall be considered as done or taken in due time if it is done or taken on the next day afterwards on which the Court or office is open;

Provided that nothing in this section shall apply to any act or proceeding to which the Indian Limitation Act, 1877, applies

(2) This section applies also to all [Central Acts] and Regulations made on or after the fourteenth day of January, 1887.

10. The Apex Court dealt with this issue in the case of State of M.P. Vs. Rustam (Supra) and observed that, a clear period of 90 days has to expire before the right begins. The Apex Court further observed that, one of the days on either side has to be excluded in computing the period of 90 days and that Sections 9 and 10 of the General Clauses Act warrant such interpretation in computing the prescribed period of 90 days. In the said case, the accused were remanded to judicial custody on 3.11.1993 and therefore, their Lordships observed that the period of 90 days would commence either from 4.9.1993 (excluding from 3.9.1993) or 3.12.1993 (including 2.12.1993). The Lordships reckoned period of 27 days for the month of September, 31 days for the month of October and 30 days for the month of November while computing the period of 90 days. Thus, it is clear that according to interpretation given to proviso of Sub-Section-2 of Section 167 of Code of Criminal Procedure in light of Sections 9 and 10 of the General Clauses Act, one of the days on either side has to be excluded while computing

the period of 90 days.

11. Keeping the above aspect in mind, if the period of 90 days is to be computed, the dates would again be relevant. The accused was remanded for the first time to custody on 2nd November, 2002 and the charge-sheet came to be filed on 31st January, 2003 and on the same day, the applicant preferred an application for default bail.

11.1 If the date of remand is 2nd November, 2002, that would leave behind 28 days of November, 31 days of December and 31 days of January to complete the period of 90 days. Differently put, 31st January would be the 90th day from the date of remand of the revisionist by the Magistrate to police custody excluding the day on which the order is passed. The right of the accused for default bail would accrue only on completion of 90 days and it cannot be said that period of 90 days had expired on 31st January, 2003 when the applicant preferred the application. As such, the revisionist exercised a right which had not accrued to him on 31st January, 2003 that being 90th day. Undisputedly, the charge-sheet has been filed on 31st January, 2003 i.e. on 90th day. Differently put, it cannot be said that on that day period of 90 days had expired and therefore, the learned Magistrate committed an error in computing the period and coming to a conclusion that period of 90 days expired on 31st January, 2003 which error has been rectified by learned Additional Sessions Judge. In the opinion of this Court, no error can be said to have been committed by learned Additional Sessions Judge while allowing the Revision Application of the State.

12. It was, however, vehemently argued that the decision in the case of Rustam (Supra) has been overruled by the Apex Court in the case of Uday Mohanlal (Supra) and he, therefore, contended that no reliance be placed on the decision in the case of Rustam. However, it is not possible to accept this contention in view of what is observed by the Apex Court in Para.13 of the said judgment in the case of Uday Mohanlal (Supra). The point for consideration before the Apex Court in Uday Mohanlal's case was, "what is the true meaning of the expression "if already not availed of" and not the aspect of period of computation ?" The Apex Court, after referring to the decision in the case of Rustam (Supra), observed, thus, "a two-Judge Bench decision of this Court in State of M.P. Vs. Rustam setting aside the order of grant of bail by the High Court on a conclusion that on the date of the order the prosecution had already submitted a police report and, therefore, the right stood

extinguished, in our considered opinion, does not express the correct position in law of the expression "if already not availed of", used by the Constitution Bench in Sanjay Dutt. [1994 (5) SCC 410]." The Lordships have, therefore, restricted their observation only in respect of interpretation given to the words "if already not availed of" in the case of Rustam (Supra) and not to the other observations made in respect of computation period of 90 days.

13. As such, without addressing to the question whether the period of 90 days has to be computed from the date of remand of the accused to the judicial custody or from the date of first remand of the accused to the custody (judicial or otherwise), in the facts of the present case, it has to be held that considering the first date of remand of the accused to the custody, the charge-sheet was submitted on 90th day and the right of the accused for default bail had not accrued on that day because the right accrues on expiry of clear period of 90 days which had not expired on 31st January, 2003 keeping in mind the fact that for computing this period, one of the days on either side has to be excluded.

13.1 On 31st January, 2003, the right had not accrued to the revisionist. Before that day can be said to have completed, charge-sheet was filed and as such, learned JMFC was in error while granting default bail to the revisionist. Learned Additional Sessions Judge was, therefore, not in error in setting aside that order by the impugned judgment and order. No interference is warranted in exercise of revisional powers by this Court.

14. In view of the above position of law and factual scenario, this Court finds no merits in this Revision Application. The Revision Application, therefore, must fail and stands dismissed. Rule discharged.

(A.L.Dave, J.)

(vipul)